

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Boston Division**

ROBERT KILLAY  
126 E. Mountain Road  
Guilford, VT 05301

vs.

SPRINGFIELD TERMINAL  
RAILWAY COMPANY  
Iron Horse Park  
North Billerica, MA 01862

and

BOSTON & MAINE CORPORATION  
Iron Horse Park  
North Billerica, MA 01862

Defendants : NO.

04 12535 NMG

MAGISTRATE JUDGE Cohen

RECEIPT #

AMOUNT \$150

SUMMONS ISSUED 12/2/04

LOCAL RULE 4.1

JURY TRIAL DEMANDED

MCF ISSUED

BY DPTY CLK

DATE 12/2/04

**COMPLAINT**

1. The Plaintiff, Robert Killay, an adult individual residing at 126 E. Mountain Road, Guilford, Vermont 05301.

2. The Defendant, Springfield Terminal Railway Company is a corporation organized and existing under the laws of the State of Massachusetts, whose principal place of business and address for service of process is Iron Horse Park, North Billerica, Massachusetts 01862.

3. The Defendant, Boston & Maine Corporation is a corporation organized and existing under the laws of the State of Massachusetts, whose principal place of business and address for service of process is Iron Horse Park, North Billerica, Massachusetts 01862.

4. This suit is brought pursuant to an Act of Congress known as the Federal Employers' Liability Act (F.E.L.A.), Title 45 U.S.C. §§51-60; the Federal Safety Appliance Acts, 45 U.S.C. §§1-16; and the Boiler Inspection Acts, 45 U.S.C. §§22-34.

5. At all times material hereto, the Defendant, Springfield Terminal Railway Company, was engaged in interstate commerce as a common carrier by railroad operating a line and system of railroads in the State of Massachusetts and other states of the United States.

6. At all times material hereto, the Defendant, Boston & Maine Corporation, was engaged in interstate commerce as a common carrier by railroad operating a line and system of railroads in the State of Massachusetts and other states of the United States.

7. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Plaintiff were done by the Defendant, their agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the Defendant.

8. At the time and place hereinafter mentioned, the Plaintiff was employed by Defendant railroads and was acting in the scope of his employment by the Defendant and was engaged in the furtherance of interstate commerce within the meaning of the F.E.L.A.

9. All the property, equipment and operations involved in this occurrence hereinafter referred to were owned and/or under the direct and exclusive control of the Defendant, their agents, servants, workmen and/or employees.

10. The Plaintiff has been employed by the Defendants from 1969 through and including October 2002, and, while working within the scope of his employment in and around the East Deerfield, Massachusetts area as a trackman was exposed to occupational risk factors for

carpal tunnel syndrome, including but not limited to repetition, force, vibration and awkward wrist posture.

11. Plaintiff's injuries were caused in whole or in part by the negligence, carelessness and recklessness of the defendant and its agents, servants, workmen and/or employees, acting within the scope of their employment, which negligence consisted of the following:

- a) failure to provide the plaintiff with a safe place to work as required by the Federal Employers' Liability Act, Title 45 U.S.C. §§51-60; the Federal Safety Appliance 45 U.S.C. §§1-16; and the Boiler Inspection Acts, 45 U.S.C. §§22-34.
- b) failure to provide a timely and adequate ergonomic program designed to prevent occupational carpal tunnel syndrome;
- c) failure to comply with safety and operating rules and regulations of the defendant;
- d) forcing the Plaintiff to work under hurried and/or awkward conditions;
- e) negligence of the defendant's agents, servants, workmen and/or employees;
- f) negligence at law; and
- g) otherwise failing to exercise due and adequate care under the circumstances including, but not limited to, a lack of adequate manpower.

12. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Plaintiff suffered occupational carpal tunnel syndrome.

13. On or about June 19, 2002, the Plaintiff was diagnosed with bilateral carpal tunnel syndrome which required left hand surgery.

14. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Plaintiff has been unable to attend to his usual duties and occupations, all of which caused substantial financial loss and all of which may and probably will continue in the future.

15. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Plaintiff has been and may continue to be required to receive and undergo medical treatment and medical care, including surgery, and has incurred reasonable and necessary medical expenses, all of which may and probably will continue in the future.

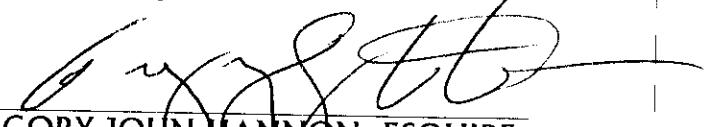
16. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Plaintiff has sustained pain, suffering, inconvenience, stress and a loss of enjoyment of life and may continue to suffer same for an indefinite period of time in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendants in an amount not in excess of ONE HUNDRED FIFTY THOUSAND DOLLARS, (\$150,000.00).

HANNON & JOYCE

Dated: 12/1/04

BY:

  
GREGORY JOHN HANNON, ESQUIRE  
The Curtis Center - Suite 450  
Independence Square West  
Philadelphia, PA 19106  
(888) 222-3352  
Attorney for Plaintiff

LAWSON & WEITZEN, LLP

Dated: 12/1/04



MICHAEL J. MCDEVITT, BBO #564720  
88 Black Falcon Avenue, Suite 345  
Boston, MA 02210  
(617) 439-4990  
Local Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Robert Killay vs. Springfield Terminal Railway Company

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 670, 680, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO 

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO 

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO 

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES  NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division  Central Division  Western Division 

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division 

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO 

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Michael J. McDevittADDRESS 88 Black Falcon Avenue - Suite 345 - Boston, MA 02210TELEPHONE NO. (617) 439-4990

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Robert Killay  
126 E. Mountain Road  
Guilford, VT 05301

(b) County of Residence of First Listed Plaintiff Windham  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Springfield Terminal - and - Boston & Maine Railway Company Corporation

Iron Horse Park

County of Residence of First Listed North Billerica, MA 01862

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c)

HANNON & JOYCE  
The Public Ledger Bldg. - Ste. 1000  
150 S. Independence Mall West  
Philadelphia, PA 19106  
(215) 446-4460  
Attorney for Plaintiff

LAWSON & WEITZEN LLP  
88 Black Falcon Avenue  
Suite 345  
Boston, MA 02210  
(617) 439-4990  
Local Counsel for Plaintiff

Attorneys (If Known)

**II. BASIS OF JURISDICTION**

(Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                                       |     |   |                            |                                       |     |
|---|----------------------------|---------------------------------------|-----|---|----------------------------|---------------------------------------|-----|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | DEF | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | DEF |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 |     | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 |     | Foreign Nation  | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |     |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

## CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability

## TORTS

- |  |   |
|--|---|
| <b>PERSONAL INJURY</b>   | <b>PERSONAL INJURY</b>  |
| <input type="checkbox"/> 310 Airplane                                | <input type="checkbox"/> 362 Personal Injury-Med. Malpractice           |
| <input type="checkbox"/> 315 Airplane Product Liability              | <input type="checkbox"/> 365 Personal Injury - Product Liability        |
| <input type="checkbox"/> 320 Assault, Libel & Slander                | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability |
| <input checked="" type="checkbox"/> 330 Federal Employers' Liability |   |
| <input type="checkbox"/> 340 Marine                                  | <b>PERSONAL PROPERTY</b>  |
| <input type="checkbox"/> 345 Marine Product Liability                | <input type="checkbox"/> 370 Other Fraud                                |
| <input type="checkbox"/> 350 Motor Vehicle                           | <input type="checkbox"/> 371 Truth in Lending                           |
| <input type="checkbox"/> 355 Motor Vehicle Product Liability         | <input type="checkbox"/> 380 Other Personal Property Damage             |
| <input type="checkbox"/> 360 Other Personal Injury                   | <input type="checkbox"/> 385 Property Damage Product Liability          |

## FORFEITURE/PENALTY

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.
- 660 Occupational Safety/Health
- 690 Other

## BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

## OTHER STATUTES

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc.
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 480 Selective Service
- 850 Securities/Commodities/Exchange
- 875 Customer Challenge 12 USC 3410
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determinations/Equal Access to Justice
- 950 Constitutionality of State Statutes
- 890 Other Statutory Actions

## PROPERTY RIGHTS

## LABOR

## SOCIAL SECURITY

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act

## FEDERAL TAXSUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Federal Employers Liability Act 45 U.S.C. §§51-60 et seq.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 150,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDG  
E

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 1, 2004

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE